

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TIMELINE, INC., *a Washington corporation*,)

Plaintiff,)

v.)

PROCLARITY CORPORATION, *an Idaho*)
corporation,)

Defendant.)

Civil Action No. CV05-1013JLR

STIPULATED PROTECTIVE ORDER

The discovery procedures in this case may require disclosure of information, either documentary or testimonial or both, regarded by the producing party as confidential information incorporating proprietary data, know-how, trade secrets, or other valuable commercial information. Accordingly, the parties, by and through their respective attorneys, stipulate and agree to the following terms and conditions, which shall apply to this civil action:

1. Any document, tangible item, or testimonial information provided by either party, which that party in good faith contends contains information proprietary to it and entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure, may be designated as confidential and, except as permitted by further Order of a Court of competent jurisdiction, or by subsequent written agreement of the producing party, such designated documents, tangible items, or testimonial information shall be received by counsel of record for the party upon the terms and

1 conditions of this Stipulated Protective Order ("this Protective Order").

2 2. Documents or tangible items shall be designated confidential within the meaning
3 of this Protective Order in the following ways:

- 4 (a) In the case of documents and the information contained
5 therein, by placing on the document the legend
6 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."
- 7 (b) In the case of interrogatory answers and the information contained
8 therein, designation shall be made by placing on the pages
9 containing the confidential information the legend
10 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."
- 11 (c) In the case of tangible items, designation shall be made by visibly
12 marking the item "CONFIDENTIAL" or "ATTORNEYS' EYES
13 ONLY."
- 14 (d) In producing original files and records for inspection, no marking
15 need be made by the producing party in advance of the inspection.
16 For the purposes of the inspection, all documents produced shall be
17 considered as marked "ATTORNEYS' EYES ONLY." Thereafter,
18 upon selection of specified documents for copying by the
19 inspecting party, the producing party shall mark as
20 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" the copies
21 of such documents as may contain confidential information at the
22 time the copies are produced to the inspecting party.

23 3. With respect to all documents, information, or tangible items, produced or
24 furnished by a party during this litigation, which are designated as "CONFIDENTIAL" or
25 "ATTORNEYS' EYES ONLY" by the producing party, such information shall be kept
26 confidential and shall not be given, shown, made available, discussed, or otherwise
communicated in any manner ("disclosed"), either directly or indirectly, to any person not
authorized to receive the information under the terms of this Protective Order.

4. If, in the course of this proceeding, depositions are conducted that involve
confidential information, counsel for the witness or party producing such information may state,
on the record, the portion of the deposition which counsel believes may contain confidential

1 information. If such designation is made, that portion of the deposition will be taken with no one
 2 present except those persons who are authorized to have access to such confidential information
 3 in accordance with this Protective Order, and the court reporter. Subject to the terms hereof,
 4 CONFIDENTIAL or ATTORNEYS' EYES ONLY information may be disclosed by a receiving
 5 party in a deposition, to the extent that its use is necessary, only at the deposition(s) of:

- 6 (a) the present Directors or Officers of the producing party;
- 7 (b) present employees, directors or officers of the producing party, to
 8 the extent such persons would be entitled to receive such
 9 information pursuant to the producing party's internal policies
 10 respecting confidentiality;
- 11 (c) an author, addressee, or other person indicated as a lawful recipient
 12 of a document containing the information;
- 13 (d) a person clearly identified in prior discovery or by the deponent in
 14 his or her deposition as an author or recipient of the information
 15 (without prior disclosure of the specific confidential information).
 16 Prior to any disclosure under this subparagraph (d), notice must be
 17 given to the producing party of the specific information so that it
 18 has a fair opportunity to object to the disclosure. Notice may be
 19 given at the time of the deposition. The parties agree to cooperate,
 20 and, if necessary, to defer any such disclosure, to allow either party
 21 to initiate action, by motion or otherwise, with the Court. The
 22 producing party bears the burden of establishing confidentiality.
- 23 (e) an independent advisor, consultant or expert otherwise qualified
 24 under this Stipulated Protective Order to receive such information;
 25 or
- 26 (f) any person for whom prior authorization is obtained from the
 producing party or the Court.

Each party shall have until fifteen (15) days after receipt of the deposition transcript
 within which to inform the other parties to the action of the portions of the transcript (by specific
 page and line reference) that are to be designated as CONFIDENTIAL or ATTORNEYS' EYES

1 ONLY. The right to make such designation shall be waived unless made within the fifteen (15)
 2 day period. Prior to such designation, or expiration of the fifteen (15) day period, the entire
 3 deposition transcript shall be deemed ATTORNEYS' EYES ONLY information. Transcripts of
 4 testimony, or portions thereof, containing confidential information shall be filed only under seal
 5 as described in paragraph 5, until further order of the Court.

6 5. Any document, pleading, or tangible item which contains confidential
 7 information, if filed or submitted to the Court, shall be filed under seal according to Court
 8 procedures.

9 6. Any confidential document, tangible item, or testimonial information produced by
 10 any party which contains information proprietary to the producing party and which is particularly
 11 sensitive competitive information, may be designated in writing as ATTORNEYS' EYES
 12 ONLY. Examples of the types of information that may be designated as ATTORNEYS' EYES
 13 ONLY include:

- 14 (a) The names, or other information tending to reveal the
 15 identities, of a party's supplier;
- 16 (b) The names, or other information tending to reveal the identities, of
 17 a party's present or prospective customers;
- 18 (c) Proprietary technical and financial information of a party;
- 19 (d) The names, or other information tending to reveal the
 20 identities, of a party's distributors; and
- 21 (e) Marketing plans of a party.

22 Other categories of ATTORNEYS' EYES ONLY information may exist. The parties agree to
 23 designate information as CONFIDENTIAL or ATTORNEYS' EYES ONLY on a good-faith
 24 basis and not for purposes of harassing the receiving party or for purposes of unnecessarily
 25 restricting the receiving party's access to information concerning the lawsuit.

26 7. Before disclosure of any information subject to this Protective Order is made to

1 any employee or officer of the non-producing party, or to any consultant or expert retained by
2 the non-producing party, counsel for the party disclosing the information shall obtain a written
3 affidavit or declaration (hereinafter "affidavit"), in the form attached hereto as Appendix A, from
4 each person to whom disclosure is to be made, acknowledging that any document, information or
5 tangible item that has been designated as confidential is subject to this Protective Order, that the
6 person has read this Protective Order, that such person agrees to comply with, and be bound by,
7 this Protective Order, and that such person is aware that contempt sanctions may be entered for
8 violation of this Protective Order.

9 The affidavit shall be provided to opposing counsel five (5) days in advance of the first
10 disclosure of any confidential information to such person. If no objection is made to such person
11 receiving confidential information within such five (5) day period from receipt of the affidavit by
12 opposing counsel, then confidential information may be disclosed to such person. If objection is
13 made, then any party may bring before the Court the question of whether the confidential
14 information may be disclosed to such person. In the resolution of such matter, the objecting
15 party shall have the burden of establishing before the Court the reasons for denying disclosure to
16 such person.

17 With regard to experts or consultants the following additional procedure shall apply for
18 the approval of access to CONFIDENTIAL or ATTORNEYS' EYES ONLY information:

19 (a) The party seeking to have the expert or consultant, as defined in Paragraph 8(c)
20 and 9(c) herein, approved shall provide the other party with a current resume or curriculum vitae
21 of such person, which shall include a description of past and present employers and persons or
22 entities with whom the consultant has been engaged in any consulting relationship in the last ten
23 years, and a copy of the executed written Confidentiality Undertaking, in the form attached
24 hereto as Appendix A.

25 (b) The resume and Confidentiality Undertaking shall be provided to opposing
26 counsel ten (10) days (via overnight delivery or email) in advance of the first disclosure of any

1 confidential information to such person. If no objection is made to such person receiving
2 confidential information within such ten (10) day period, then confidential information may be
3 disclosed to such person. However, this shall not preclude a party from objecting to continued
4 access to CONFIDENTIAL or ATTORNEYS' EYES ONLY information by that person where
5 such facts suggesting a basis for objection are subsequently learned by the party or its counsel.

6 (c) If the other party so objects, the parties shall, within fifteen (15) days from the
7 date of the mailing of notice of objection, confer and attempt to resolve the dispute. At that
8 conference the objecting party shall inform the party requesting approval of its reason for
9 objecting to the designated person. If the parties cannot resolve the dispute, either within fifteen
10 (15) days from the date of the conference or, if the conference does not take place, within thirty
11 (30) days from the date of mailing of the notice of objection, then any party may bring before the
12 Court the question of whether the confidential information may be disclosed to such person.
13 These time periods are not to restrict either party from moving for a court order earlier if the
14 circumstances so require. In the resolution of such matter, the objecting party shall have the
15 burden of establishing before the Court the reasons for denying disclosure to such person.
16 Failure to file a motion within these periods shall constitute waiver of the specific objection, but
17 shall not preclude a party from objecting to continued access of CONFIDENTIAL or
18 ATTORNEYS EYES ONLY information where facts suggesting a basis for objection are
19 subsequently learned by the party or its counsel.

20 (d) The process defined in this paragraph and its subparagraphs shall not be used by
21 either party as a means of obtaining or attempting to obtain discovery from a non-testifying
22 consulting expert.

23 All signed affidavits and Confidentiality Undertakings shall be maintained through the
24 conclusion of this action.

25 8. Except as permitted by further order of this Court or pursuant to paragraph 10 or
26 by subsequent written agreement of the producing party, disclosure of ATTORNEYS' EYES

1 ONLY documents or information, including summaries thereof, but not including documents
2 with the confidential portions redacted, shall be limited to:

- 3 (a) counsel of record for the parties, and associate attorneys
4 and paralegals and clerical employees assisting such
5 counsel, except for any such persons or others involved in
6 preparation and prosecution of any patent application for
7 the parties;
- 8 (b) Judges, Magistrates, law clerks, and clerical personnel of the Court
9 before which this action is pending pursuant to Paragraph 5;
- 10 (c) consultants or experts, who are not employees or officers of the
11 parties or are anticipated to become an employee or officer in the
12 near future, retained by either of the parties to consult or testify in
13 the case, and pursuant to the conditions set forth in Paragraph 7;
- 14 (d) employees and officers of the party producing the documents or
15 information; and
- 16 (e) authors or drafters of the documents or information.

17 The parties agree that any disclosure under this paragraph shall not be deemed to waive any
18 attorney-client privilege or work product immunity that may exist.

19 9. Except as permitted by further order of this Court or pursuant to paragraph 10 or
20 by subsequent written agreement of the producing party, disclosure of information designated as
21 CONFIDENTIAL, including summaries thereof, shall be limited to (a) the persons and entities
22 identified in paragraph 8; and (b) employees or officers of the non-producing party.

23 The parties agree that any disclosure under this paragraph shall not be deemed to waive any
24 attorney-client privilege or work product immunity that may exist.

25 10. If it becomes necessary for counsel for a party receiving CONFIDENTIAL or
26 ATTORNEYS' EYES ONLY information to seek the assistance of any other person, other than
those referred to in paragraphs 8 and 9, including any employee of the receiving party with
respect to documents designated ATTORNEYS' EYES ONLY, and to disclose
CONFIDENTIAL or ATTORNEYS' EYES ONLY information to such person in order to

properly prepare this litigation for trial, the following procedures shall be employed:

- (a) Counsel for the receiving party shall notify, in writing, counsel for the party producing the CONFIDENTIAL or ATTORNEYS' EYES ONLY information of their desire to disclose such CONFIDENTIAL or ATTORNEYS' EYES ONLY information and shall identify the person(s) to whom they intend to make disclosure;
- (b) If no objection to such disclosure is made by counsel for the producing party within ten (10) days of such notification, counsel for the receiving party shall be free to make such disclosure to the designated person(s); provided, however, that counsel for the receiving party shall serve upon opposing counsel, prior to disclosure, a Confidentiality Undertaking in the form attached hereto as Appendix A, whereby such person agrees to comply with and be bound by this Protective Order.
- (c) If the producing party objects to such disclosure, no disclosure shall be made. Any party may bring before the Court the question of whether the particular CONFIDENTIAL or ATTORNEYS' EYES ONLY information can be disclosed to the designated person(s). In the resolution of such matter, the producing party shall have the burden of establishing before the Court the reasons for denying disclosure to the designated person(s).

11. If, through inadvertence, a producing party provides any information pursuant to this litigation without marking the information as CONFIDENTIAL or ATTORNEYS' EYES ONLY information, the producing party may subsequently inform the receiving party of the CONFIDENTIAL or ATTORNEYS' EYES ONLY nature of the disclosed information, and the receiving party shall treat the disclosed information as CONFIDENTIAL or ATTORNEYS' EYES ONLY information upon receipt of written notice from the producing party, to the extent the receiving party has not already disclosed this information.

12. The restrictions set forth in this Order will not apply to information which is known to the receiving party or the public before the date of its transmission to the receiving party, or which becomes known to the public after the date of its transmission to the receiving

1 party, provided that such information does not become publicly known by any act or omission of
2 the receiving party, its employees, or agents which would be in violation of this order. If such
3 public information is designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, the
4 receiving party must inform the producing party of the pertinent circumstances and the
5 producing party must agree before the restrictions of this order will be inapplicable.

6 13. No person or party shall directly or indirectly utilize or disclose any
7 CONFIDENTIAL or ATTORNEYS' EYES ONLY information obtained pursuant to pretrial
8 discovery in this action, except for the purpose of this action only (for example, the confidential
9 information obtained in this action may not be used for any business or competitive purpose
10 other than this action) or in accordance with any further order issued by the Court.

11 14. Acceptance by a party of any information, document, or thing designated as
12 CONFIDENTIAL or ATTORNEYS' EYES ONLY shall not constitute a concession that the
13 information, document or thing is properly designated under the Protective Order. Either party
14 may contest a designation under the Protective Order made by the other party. If the receiving
15 party disagrees with the designation and marking by any producing party of any material as
16 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY", then the parties shall first try to resolve
17 such disputes on an informal basis. If agreement cannot be reached between counsel, then such
18 dispute may be presented to the Court by either party by motion or otherwise. In the resolution
19 of such matter, the party asserting confidentiality shall have the burden of establishing before the
20 Court the confidentiality of the information, document, or thing.

21 15. This Protective Order shall be without prejudice to the right of any party to
22 oppose production of any information on grounds other than confidentiality.

23 16. This Protective Order shall not prevent any party from applying to the Court for
24 relief therefrom, or from applying to the Court for further or additional protective orders, or from
25 agreeing among themselves to modify or vacate this Protective Order, subject to the approval of
26 the Court.

1 17. Within thirty (30) days of the conclusion of this action, including any appeals, all
2 CONFIDENTIAL and ATTORNEYS' EYES ONLY information furnished pursuant to this
3 Protective Order, and all copies thereof, shall be returned to the producing attorneys of record,
4 or, at the producing party's option, destroyed by counsel for the receiving party. The provisions
5 of this Protective Order insofar as it restricts the disclosure, communication of, and use of,
6 CONFIDENTIAL and ATTORNEYS' EYES ONLY information produced hereunder shall
7 continue to be binding after the conclusion of this action.

8 18. If discovery is sought of a person not a party to this action ("non-party") requiring
9 disclosure of such non-party's CONFIDENTIAL or ATTORNEYS' EYES ONLY information,
10 the CONFIDENTIAL or ATTORNEYS' EYES ONLY information disclosed by such non-party
11 will be accorded the same protection as the parties' CONFIDENTIAL or ATTORNEYS' EYES
12 ONLY information, and will be subject to the same procedures as those governing disclosure of
13 the parties' CONFIDENTIAL or ATTORNEYS' EYES ONLY information pursuant to this
14 Stipulated Protective Order.

15 19. In the event that information in the possession or control of a party involves the
16 confidentiality rights of a non-party or its disclosure would violate a Protective Order issued in
17 another action, the party with possession or control of the information will attempt to obtain the
18 consent of the non-party to disclose the information under this Order. If the consent of the non-
19 party cannot be obtained, the party will notify the party seeking discovery of (a) the existence of
20 the information without producing such information; and (b) the identity of the non-party
21 (provided, however, that such disclosure of the identity of the non-party does not violate any
22 confidentiality obligations). The party seeking discovery may then make further application to
23 the non-party or may bring the matter before the Court.

24 20. If any party (a) is subpoenaed in another action, (b) is served with a demand in
25 another action to which it is a party, or (c) is served with any other legal process by one not a
26

1 party to this action, seeking information or material which was produced or designated as
2 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY " by someone other than that party, the
3 party shall give prompt actual written notice, by hand or facsimile transmission, within ten (10)
4 days of receipt of such subpoena, demand or legal process, to those who produced or designated
5 the information or material "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY " and shall
6 object to its production to the extent permitted by law. Should the person seeking access to the
7 information or material take action against the party or anyone else covered by this Protective
8 Order to enforce such a subpoena, demand or other legal process, the party shall respond by
9 setting forth the existence of this Protective Order. Nothing herein shall be construed as
10 requiring the party or anyone else covered by this Protective Order to challenge or appeal any
11 order requiring production of information or material covered by this Protective Order, or to
12 subject itself to any penalties for noncompliance with any legal process or order, or to seek any
13 relief from this Court.
14

15 21. The intentional or inadvertent production by one party to another of any document
16 entitled to protection under the attorney-client privilege or the attorney work-product doctrine
17 ("privilege") shall not constitute a waiver of such privilege as to the subject matter of the
18 document. If during discovery either party produces to the other a document entitled to
19 privilege, the producing party may request the return of the document at any time prior to the
20 commencement of trial, but in any event not more than fifteen (15) calendar days after the
21 document is first identified as being entitled to privilege, marked as an exhibit, or identified as a
22 potential trial exhibit. Such a request must be made in writing and must identify the basis for the
23 privilege claimed. If the party that received the document agrees that it is privileged (without
24 regard to its production during document production), then the document and all copies shall
25 promptly be returned to the producing party or destroyed, and no reference to such document
26

1 shall be made in connection with the proof of the facts in this dispute.

2 If the party that received the document does not agree that the document is privileged,
3 then it shall so notify the producing party within ten (10) calendar days of receiving written
4 notice of the asserted privilege. In such event, the producing party may move the Court to
5 resolve the question of privilege. Unless the parties otherwise agree in writing, any such motion
6 must be made within fifteen (15) calendar days of receiving notification that the receipt of the
7 document disputes the claim of privilege. If the Court rules that the document is privileged
8 (without regard to the fact of production in the course of document production), then the party
9 that received the document shall promptly return the document and all known copies to the
10 producing party (except that counsel may retain copies as needed for the sole purpose of seeking
11 reconsideration or appellate review of the Court's ruling on the question of privilege) and shall
12 make no reference to the document in connection with the proof of the facts in this case.

13 The foregoing is hereby stipulated by and between counsel.

14 DATED this ___ day of November, 2005.

15 DORSEY & WHITNEY LLP

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TIMELINE, INC., *a Washington corporation,*

Plaintiff,

v.

PROCLARITY CORPORATION, *an Idaho corporation,*

Defendant.

Civil Action No. CV05-1013JLR

**CONFIDENTIALITY
UNDERTAKING**

I have read and reviewed in its entirety the annexed Stipulated Protective Order (“Protective Order”) that has been signed and entered in this matter.

I hereby agree to be bound by and comply with the terms of the Protective Order, and not to disseminate or disclose any information contained in documents pursuant to the Protective Order that I either review or about which I am told, to any person, entity, party, or agency for any reason, except in accordance with the terms of the Protective Order.

I further agree to submit to the jurisdiction of this Court for the purposes of enforcement of the terms of this Protective Order.

DATED this ____ day of _____, 2005.

(Signature)

(Typed

Name)

ORDER

IT IS SO ORDERED this 29th day of November, 2005.

s/James L. Robart

HONORABLE JAMES L. ROBART, U.S. DISTRICT JUDGE